

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
LARRY D. VAUGHT, JUDGE

DIVISION IV

CACR07-517

January 30, 2008

GARY LEONARD LOMAX  
APPELLANT

APPEAL FROM THE GARLAND  
COUNTY CIRCUIT COURT  
[CR-05-474-1]

V.

HON. JOHN HOMER WRIGHT,  
CIRCUIT JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Gary Lomax was convicted by a Garland County jury of possession of a controlled substance with the intent to deliver and simultaneous possession of drugs and firearms. He was sentenced to sixteen years' imprisonment in the Arkansas Department of Correction for each conviction, to run concurrently. Lomax brings this appeal arguing that the trial court erred in denying his motions for directed verdict. We affirm.

Lomax lived in an apartment on Park Avenue in Hot Springs, Arkansas. In June 2005, the Hot Springs Police Department received complaints daily about drug activity taking place at Lomax's apartment. For approximately two to three months thereafter, Detectives Larry Patrick and Mark Davis surveilled Lomax's apartment. Both detectives testified at trial that they observed heavy vehicle and foot traffic entering and exiting Lomax's apartment. They

also observed that those individuals who entered Lomax's apartment stayed very short periods of time—less than two minutes and sometimes just a few seconds. Detective Patrick testified that on several occasions he stopped individuals who had just left Lomax's apartment to ask them what business they had there. These individuals were unable to identify who they were visiting or explain the purpose of their visit.

This suspicious activity led Detective Patrick to conduct two controlled buys using confidential informants. On both occasions, the confidential informants returned from Lomax's apartment after having purchased 0.5 grams of cocaine.

Based on the above information, Detective Patrick obtained a search warrant of Lomax's apartment. When Detectives Patrick and Davis entered the apartment, Lomax, along with three other individuals, were inside.<sup>1</sup> During his search, Detective Patrick found a plastic bag containing marijuana on the dining room table, nearly four grams of crack cocaine in the top dresser drawer in Lomax's bedroom, a plastic bag containing two grams of powder cocaine and a pistol in the second dresser drawer in Lomax's bedroom, and a set of digital scales in the bedroom closet.

Following the search, Detective Patrick interviewed Lomax who stated that he “was just trying to make a little to get by.” Lomax also stated, “all that stuff is mine. Those people had nothing to do with it. I know I'm in trouble.” When asked about the pistol that was found

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<sup>1</sup>Those individuals were Lorna Murphy, Allen Riley, and Carlos McGraw. According to Detective Patrick, Murphy's husband or boyfriend was involved in drug trafficking, and McGraw had marijuana in his possession at the time Lomax's apartment was searched.

in his bedroom, Lomax stated, “I got the gun about two months ago from some clown. That’s just what I call ‘em. I just kinda collect things. It looked cool.”

At trial Lomax admitted that he possessed the crack cocaine. However, he denied that there were individuals frequently in and out of his apartment, that he possessed the powder cocaine or marijuana, that he sold drugs of any kind, that controlled buys occurred at his residence, and that he possessed the pistol. He testified that the pistol belonged to his son and that he did not know his son had left it in the apartment. Lomax’s son corroborated this testimony.

Twice, Lomax moved for a directed verdict, arguing that there was insufficient evidence that he possessed a controlled substance and that the State failed to prove that he possessed a firearm. These motions were denied, and the jury convicted Lomax on both charges.

For his first point on appeal, Lomax argues that there was insufficient evidence that he possessed a controlled substance with the intent to deliver. He argues that no plastic bags, large quantities of money, or other evidence demonstrating his intent to deliver drugs were introduced at trial. He further argues that other people known to be involved with drugs were also in the apartment. Lomax contends that the drugs and digital scales were seized in a room separate from where he was located upon the police officers’ arrival. And finally, at trial he admitted possession of the drugs, but denied selling them.

We treat a motion for a directed verdict as a challenge to the sufficiency of the evidence. *Stewart v. State*, 362 Ark. 400, 208 S.W.3d 768 (2005). When a defendant

challenges the sufficiency of the evidence that led to a conviction, the evidence is viewed in the light most favorable to the State. *Id.* Only evidence supporting the verdict will be considered. *Id.* The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Whether evidence is direct or circumstantial, it must meet the requirements of substantiality. *Id.* Substantial evidence is evidence forceful enough to compel the fact-finder to make a conclusion one way or the other without resorting to speculation or conjecture. *Id.* Direct evidence is evidence that proves a fact without resorting to inference. *Id.* When circumstantial evidence alone is relied upon, it must exclude every other reasonable hypothesis than that of the guilt of the accused, or it does not amount to substantial evidence. *Id.*

Contrary to Lomax's argument, the record holds substantial evidence to support the conviction for possession of cocaine with the intent to deliver. First, the search of Lomax's apartment revealed almost four grams of crack cocaine, two grams of powder cocaine, two bags of marijuana, a set of digital scales, and a pistol. Lomax told Detective Patrick after the search that "all that stuff is mine" and "I was just trying to make a little to get by...." Second, two controlled buys of crack cocaine occurred at Lomax's apartment. Third, Detective Patrick testified that there were signs of drug trafficking occurring at Lomax's apartment, which included numerous people in and out of the apartment and the discovery of small plastic bags with the corners torn out found near the cocaine. Fourth, the amount of crack cocaine and cocaine powder that Lomax possessed created a statutory presumption that it was possessed with the intent to deliver. *See Ark. Code Ann. § 5-64-401(d) (Supp. 2007).*

And finally, the pistol was found in the same drawer as some of the drugs. It has been held that when an accused is charged with possession of a controlled substance with intent to deliver, evidence of the possession of firearms is relevant to prove intent. *Hendrickson v. State*, 316 Ark. 182, 871 S.W.2d 362 (1994).

The above is substantial evidence supporting the conviction for possession of cocaine with the intent to deliver. Therefore, we hold the trial court did not err in denying Lomax's motions for directed verdict.

Lomax next argues that the trial court erred in denying his motions for directed verdict because there was insufficient evidence that he simultaneously possessed drugs and firearms. Lomax was convicted under Arkansas Code Annotated section 5-74-106, which makes it unlawful to commit a violation of section 5-64-401<sup>2</sup> while in possession of a firearm. Ark. Code Ann. § 5-74-106 (Supp. 2007). To sustain a conviction for simultaneous possession, the State must prove (1) that the defendant possessed a controlled substance and a firearm, and (2) that a connection existed between the firearm and the controlled substance. *Vergara-Soto v. State*, 77 Ark. App. 280, 74 S.W.3d 683 (2002); *see also Manning v. State*, 330 Ark. 699, 956 S.W.2d 184 (1997) (holding that some link between the firearm and drugs is required; mere possession of a firearm is not sufficient).

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<sup>2</sup>Section 5-64-401 sets forth the criminal penalties for manufacturing, delivering, or possessing a controlled substance with the intent to manufacture or deliver. Ark. Code Ann. § 5-64-401(a) (Supp. 2007).

Lomax concedes that the State has sufficiently proven a connection between the pistol and the controlled substances as both were located in the same dresser drawer. However, he asserts that the State has failed to show that he actually or constructively possessed either item. He argues that the drugs and the pistol were found in the bedroom while Lomax was in the living room. He further argues that because there were three other individuals in the living room and two of those individuals had drug connections, these individuals could have possessed the drugs and pistol.

Fatal to Lomax's argument is the fact that he confessed to possessing both the drugs and pistol. Lomax told Detective Patrick, "all that stuff is mine." Furthermore, he previously exonerated the three other individuals in his apartment when he explained to Detective Patrick that, "those people [in the apartment] had nothing to do with it." While Lomax recanted and/or tried to qualify much of his confession at trial, the jury did not have to believe him. *See Turbyfill v. State*, 92 Ark. App. 145, 211 S.W.3d 557 (2005) (holding that the finder of fact is not required to believe the defendant's version of events because he is the person most interested in the outcome of the trial). Therefore, we hold that there is sufficient evidence to support the trial court's denial of Lomax's motions for directed verdict on the conviction for simultaneous possession of controlled substances and firearms.

Affirmed.

BIRD and GLOVER, JJ., agree.